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June 30, 2005

VIA OVERNIGHT MAIL AND ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: KITV-DT, Honolulu, HI
MB Docket No. 03-15
DTV Maximization Waiver Request**

Dear Ms. Dortch:

On behalf of Hearst-Argyle Stations, Inc. ("Hearst-Argyle"), licensee of Digital Television Station KITV-DT, Honolulu, Hawaii, this letter shall serve as Hearst-Argyle's request for waiver of the Commission's "use-it-or-lose-it" maximization deadline of July 1, 2005, in accordance with the Commission's June 15, 2005, Public Notice, DA 05-1636. *See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 04-192 (Rel. Sept. 7, 2004) ("*DTV R&O*"), at ¶¶ 83, 87.

As certified in its Form 381 filing (FCC File No. BCERCT-20041105ABZ), KITV intends to operate its post-transition DTV station based on its maximized facilities, as authorized by its construction permit in FCC File No. BMPCDT-20041102ACC. KITV is presently operating its DTV facility pursuant to its DTV license in FCC File No. BLCDT-19980318KG with 8.5 kW ERP. The only difference between KITV's licensed DTV facility and its construction permit facility is that the construction permit increases the station's power to 85 kW.

To achieve the power increase specified in its construction permit, KITV must install a second transmitter, which it will have in its possession and will be ready and willing to install prior to July 1, 2005. However, due to circumstances beyond KITV's control, the landlord for KITV's tower site will not permit KITV's second DTV transmitter to be installed in time for KITV to satisfy the July 1, 2005, maximization deadline. KITV's transmitter site is located on top of the Ala Moana Hotel (the "Hotel") and is co-located with Radio Station KHNR-FM, Honolulu, Hawaii. Due to recent modifications to KHNR-FM, the Hotel has raised concerns with respect to KHNR-FM's occupational RF exposure levels, and KHNR-FM has commissioned an RF exposure measurement study. While KITV has assured the Hotel that the addition of KITV's second transmitter will not result in RF radiation in excess of the FCC's limits, the Hotel will not permit KITV to install the second transmitter until it has received and is satisfied with the results of KHNR-FM's RF study. KITV continues to believe, as previously certified, that KITV-DT's operations at 85 kW combined with the authorized operation of KHNR-FM are within the Commission's RF radiation limits.

Further compounding KITV's difficulty in installing its second transmitter is that the Hotel recently walled up the only access way to the transmitter room through which KITV's second transmitter is capable of fitting. Apart from the Hotel's concerns with respect to KHNR-FM's RF radiation levels, the Hotel is unable to schedule its contractors to open up the wall in time to permit installation of the second transmitter prior to July 1, 2005.

In the *DTV R&O*, the Commission stated that it "will establish a limited waiver process and grant extensions of the applicable replication or maximization interference protection deadline on a six-month basis if good cause is shown." *DTV R&O*, at ¶ 87. Stations "that cannot build out for reasons beyond their control" may seek a waiver. *DTV R&O*, at ¶ 83. The instant case clearly presents a circumstance beyond Hearst-Argyle's control, as the Ala Moana Hotel will not permit KITV to install its second DTV transmitter in time for KITV to commence operation pursuant to its 85 kW ERP construction permit prior to July 1.

Hearst-Argyle is, of course, dedicated to digital television and projects that the issues will be resolved with the Ala Moana Hotel in the near future. At that time, KITV-DT will be able to complete installation of its maximized DTV facility and fully comply with the maximization requirement.

Ms. Marlene H. Dortch
June 30, 2005
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If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,


BROOKS, PIERCE, McLENDON,
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